

# ACCOUNTANCY

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## PROFESSIONAL NOTES

### "Wings for Victory" Weeks

In another column we publish the text of a letter which is being sent to all practising members of the accountancy profession in the City and County of London over the signature of Mr. Chas. J. G. Palmour, the President of the Institute, who is again acting as chairman of the accountants' committee set up last year in connection with the London Warships Week. The target set in London is £150,000,000, and in order to reach that figure every member of the community will need to do his utmost towards raising the required sum. We commend this letter to all our readers because the suggestions embodied apply with equal force to members in other cities and towns which will be holding similar "weeks" on various dates.

### Accounting Principles

The Council of the Institute of Chartered Accountants has issued recommendations regarding (1) Tax Reserve Certificates, and (2) War Damage Contributions, Premiums and Claims, in relation to the accounts of companies. These recommendations have been issued at the request of a number of members owing to the diversity of opinion as to the

most appropriate method of dealing with these particular items in accounts. In relation to Tax Reserve Certificates, it is recommended (a) that the amount of tax reserve certificates held should be shown as a separate item in the balance sheet and grouped with the current assets; and (b) that the 1 per cent. per annum allowed on the surrender of the certificates in payment of taxation, etc., should be treated as interest and not as a reduction of the taxation charge. It is further suggested that accrued interest to the date of the balance sheet should not be taken to credit unless the certificates have been surrendered before the balance sheet has been signed. The recommendations in relation to war damage contributions, premiums and claims, suggest that provision for the full amount of the contribution should be made out of available profits or free reserves and that war damage premiums should be treated in the same way. A reservation is made with regard to certain classes of companies, such as statutory companies, property companies and building societies where the recommendations might not be appropriate. The treatment in published accounts of war damage claims on fixed assets is a matter for special consideration in each case and standardised wording is not recommended.

### New Year Honours

The following names of interest to the accountancy profession appeared in the New Year Honours List:

#### *Knights Bachelor*

Archibald Finlayson Forbes, C.A., Deputy Secretary, Ministry of Aircraft Production.

Frank Nicholson, C.B.E., A.C.A., Chairman, Sunderland Local Employment Committee.

Arthur Stiebel, Chief Registrar in Bankruptcy.

#### *C.B.E.*

W. E. Cox, Senior Principal Inspector of Taxes, Board of Inland Revenue.

Commodore G. J. R. L. D'Erlanger, A.C.A., Air Transport Auxiliary.

Sydney Parkes, Chairman, City of London Savings Committee, Joint General Manager, Lloyds Bank.

R. E. Yeabsley, A.C.A., F.S.A.A. For services to the Central Price Regulation Committee.

W. S. Bell, A.C.A., a British subject resident in Buenos Aires.

#### *O.B.E.*

G. E. Martin, F.S.A.A., Borough Treasurer and Accountant, Poplar.

#### *M.B.E.*

C. H. Pollard, F.S.A.A., Hon. Secretary, Hull and District Savings Committee.

S. G. Rowlandson, F.C.A., Chairman, Enfield Savings Committee.

V. R. Sharp, A.S.A.A., Hon. Campaign Secretary, Redditch Savings Committee.

H. B. Southam, A.S.A.A., Secretary and Accountant, Birmingham Jewellers' and Silversmiths' Association.

### Banks and E.P.T.

In their statements this year most of the bank chairmen have again confined themselves to domestic topics, but at least one of the subjects dealt with should be of particular interest to accountants. It has been left to Lord Wardington, chairman of Lloyds Bank, to clear up the vexed question of why the banks are not yet liable to E.P.T. The fact that they are not liable was first revealed by Mr. McKenna in his recent pamphlet "What is Banking?" though he did not return to the subject in his statement to shareholders of the Midland Bank. This fact stood in sharp contrast to the evidence that bank profits, when grossed up for income tax, were considerably higher last year than in the standard years for E.P.T. purposes. Lord Wardington's statement has now reconciled this apparent contradiction. The explanation is that bank profits for taxation purposes, or at least Lloyds Bank profits, were considerably higher in the standard years than the published figures suggest. The reason for this discrepancy is that particularly high profits from the sale of investments were made in the standard year. As a non-recurring item this profit was not included in published profits, though it must, of course, have appeared in profits computed for taxation purposes. In the same way Lord Wardington points out that provision for depreciation of investments might be debited to profit and loss account, but would have to be written

back for E.P.T. purposes. On some occasions investment depreciation has required the provision of an amount equal to 18.9 per cent. of earnings, while in other years the profit on sales of investments has yielded sums equal to 16.7 per cent. of earnings. Lord Wardington's conclusion, which is rather more controversial, is that it would be impracticable in any statement short enough to be intelligible to show these differences year by year.

### Banking Costs

Other bank chairmen went out of their way to dispose of the "costless credit" fallacy, but it was again Lord Wardington who gave the most interesting illustration of why the war-time expansion in bank deposits is not reflected in still higher earnings. The reasons provided by the additional interest paid on deposits, the higher staff payments, the decline in foreign exchange earnings, the fall in advances and the rise in liquid assets bearing low rates of interest, are all familiar enough. But they were given greater reality by Lord Wardington's illustration showing that out of every pound earned by Lloyds Bank in 1942, 3s. 2d. went by way of interest and 8s. 9d. in salaries, pensions and staff funds, leaving only 8s. 1d. to cover all other expenses, provision for bad debts, taxation, dividend and allocations. This separation would have been even more interesting if Lord Wardington had subdivided the last item, but that would doubtless be expecting too high a degree of revelation. Banking costs were also dealt with by the Hon. Rupert E. Beckett in his statement to shareholders of the Westminster Bank, but the most notable part of his speech was his refutation of those who accuse the banks of monopoly and urge their nationalisation. Mr. Beckett had no difficulty in demonstrating that the banks do not, in fact, constitute a monopoly. They remain competitive, and if the banks were nationalised customers would lose the advantages derived from competition, as well as the "personal touch" which bureaucracy cannot provide. In Mr. Beckett's view there is nothing to suggest that nationalisation would either cheapen or improve existing banking facilities.

### The National Balance Sheet

The Archbishop of Canterbury opened a series of addresses which are being delivered on Wednesdays at 1.15 p.m. in St. Paul's Cathedral, under the general title "The National Balance Sheet—A Christian Audit." The Archbishop said that there had been many changes in personal and social life. These were good so far as they expressed the supremacy of the motive of service over that of personal gain, but bad so far as they diminished the sense of personal responsibility. If democracy was to survive we must cultivate individual judgment and individual responsibility. Most people favoured some increase of planning in the national life: we must face the fact that planning was only possible at the cost of some loss of liberty. The demand for greater security against poverty and unemployment had started before the outbreak of war. Poverty might be pursued voluntarily for the sake of the spirit, but involuntary poverty was destructive of enterprise. The second



and third addresses were given by Mr. B. Smallpeice, A.C.A., and Mr. W. G. Symons, of the Institute of Public Administration. Future speakers are: February 3, Mr. H. C. Dent, editor of *The Times Educational Supplement*; February 10, the American Ambassador; February 17, Rev. St. John B. Grosser; and February 24, the Dean of St. Paul's.

#### Liverpool Personal Service Society

An admirable record of advice and help freely given wherever the need arose is contained in the report for the year ended September, 1942, of the Liverpool Personal Service Society. This body is now in its twenty-fifth year, but most of the 95,382 enquiries in the period covered by this report arose from wartime legislation and regulations. The Poor Man's Lawyer and Poor Man's Valuer services have been widely appreciated, and a new feature of the year's work has been a special service of advice on income-tax problems. Members of the accountancy profession in Liverpool have attended by rota for two hours every Wednesday evening at the central Citizens' Advice Bureau. The service has been of considerable advantage to those who have become liable to income tax for the first time, and to women upon whom, through the absence of their husbands on war service, have fallen unaccustomed responsibilities.

#### Register of Withdrawing Retail Traders

The Board of Trade are now prepared to receive applications for admission to the Register of Withdrawing Non-food Retail Traders. Traders must have closed a shop since September 3, 1939, and must have been in business for a substantial period before closing—normally for a continuous spell of twelve months before withdrawal, or alternatively for a total period of two years in the five years before withdrawal. Registration is limited to those who have traded in the categories of goods and services covered by the Location of Retail Businesses Order, since there is no restriction on the opening of new retail businesses of other kinds. A trader who has closed one or more shops but continues to trade from other shops is eligible for registration, but a trader who has closed part of a shop cannot register in respect of that part. There will be a supplementary list of traders whose businesses have been sold as going concerns, in order that consideration may be given to cases where there has been a forced sale owing to war circumstances. There will be no fee for registration, and the information will be treated as confidential. Forms of application (R.T.R.2) are obtainable from local Chambers of Trade, Chambers of Commerce, Citizens' Advice Bureaux, W.V.S. village representatives, or the Board of Trade, Neville House, Page Street, London, S.W.1.

#### The British Provident Association

The twentieth annual report of the British Provident Association covers the year ended June 30, 1942. It is accompanied by a message from the new

President, The Right Hon. The Earl of Harewood, K.G., G.C.V.O., who expresses his conviction that the B.P.A. is working on correct and successful lines to ease the difficulty—which will not grow less—of the man and woman of moderate means in meeting the calamitous expense which a grave illness or surgical operation so often entails. The Executive Council of the Association has issued a memorandum on the position of provident schemes in the future medical services of the country. It is strongly of the opinion that, while improved and better organised medical services are urgently necessary, there should continue to be complete freedom to choose one's own doctor, hospital or nursing home, and that there should be no interference in the relationship of doctor and patients. The Council circularised its subscribers to ascertain their views, and the replies showed a large body of opinion that people of moderate means are in need of suitable institutional accommodation at reasonable charges and of means of mitigating the financial burden of serious illness. The extension of pay beds in voluntary hospitals and the development of provident schemes on similar lines to those operated by the British Provident Association are considered essential.

#### Employment of Disabled Persons

A report has been published by the Inter-Departmental Committee under the chairmanship of Mr. G. Tomlinson, Parliamentary Secretary of the Ministry of Labour, on the employment of persons disabled by war or other injuries. Legislation is proposed to provide for the following purposes: (a) a register of disabled men, superseding the King's Roll, but with special provision for disabled men of the last war; (b) a quota of disabled persons, to be a percentage of the total employees in an employer's establishment; (c) the scheduling of certain occupations for the benefit of disabled persons. At any time when the number of disabled persons employed in a firm fell below the prescribed quota, there would be a statutory restriction on the engagement of further workers. Occupations which might be scheduled specially for the benefit of disabled persons would include, for example, lift attendants and messengers. In such occupations, an employer would not be able to engage an able-bodied person without a licence, which would be given only if a local committee were satisfied that no suitable disabled person was available. For those disabled persons who are unable to enter the field of ordinary employment, the committee recommends the provision of employment through the use of voluntary undertakings and special centres under public control. This new service would be the responsibility of a Government department, and would be administered by a public corporation. In other cases, it is recognised that the resettlement of disabled persons in employment is only satisfactory when the disabled man can hold the job on his merits and in normal competition with his fellows.

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## EMPLOYMENT, PRODUCTION AND FINANCE

All the economic problems of the peace focus down to a single issue: the abolition of mass unemployment. If that objective can be achieved, it will be evidence that most of the difficulties of economic reconstruction will have been largely surmounted. The attainment of that objective without sacrificing the liberties for which this war is being fought will provide the great test of democracy—certainly as rigorous a test as is being provided by the war itself. It is, therefore, reassuring to see evidence of much thought and study being devoted to this basic problem. Among the contributions that have been made to its discussion in recent months, a high place must be given to the memorandum on "The Problem of Unemployment" which has recently been issued by Lever Brothers and Unilever, Limited. One of its virtues is a negative one: this blue print of the post-war mechanism of economic regulation, though it comes from industrialists, avoids all pretensions to self-government by industry. It has none of that distasteful odour of the syndicalist State which has tainted other industrial contributions to the discussion of this problem. Another virtue of this plan, one that was to be expected of anything emerging from this great international concern, is that it endeavours to place its proposals for tackling the problem of unemployment within the framework of a world economy.

The approach of this report to the problem of unemployment is based on the now widely accepted concept, evolved by Lord Keynes, of disequilibrium between savings and investment as being the main cause of cyclical economic fluctuations and, therefore, of mass unemployment. The control of investment is, in the main, to lie with the Government. This, in the view of the Lever writers, does not mean the exercise by the Government of direct control over production, apart from the period of acute shortages of materials immediately after the war. The investment of capital should still remain in large part the province of private enterprise; but the Government should exercise its indirect means of control far more consciously and far more intelligently than has hitherto been done in times of peace. The power of the Government in controlling the monetary system and deciding the rate of interest on the money and capital markets has always been used, but in the past with the objective of maintaining international equilibrium, i.e., keeping the exchanges stable, rather than of maintaining full employment.

Budget policy has not up to now been used as a stabilising factor in the economic position. The reverse has tended to be the case. In times of depression, when taxable income has fallen, the tendency has been to increase rates of taxation in order to meet the expenses of Government, in which there is a considerable element of rigidity. In times of boom, on the contrary, the burden of taxation, measured as a proportion of the national income, has tended to fall.

One of the main proposals of the report, therefore, is the introduction of a two-Budget system. There would be an "ordinary" Budget, balanced annually, for meeting standing expenditure out of current revenue. In addition there would be an "extraordinary" Budget to meet normal capital expenditure and such emergency measures as should be taken in times of depression to fight unemployment or stimulate trade. This last Budget would be covered—or over-covered—only in times of prosperity. Among the more detailed suggestions made for the implementation of this "compensatory" Budget policy is that there should be variations of the rates of depreciation on capital expenditure according to the period when it was undertaken—allowing no depreciation, or even taxing capital expenditure, in periods of boom expansion whilst allowing capital expenditure incurred in periods of depression to be offset against income. The guiding signals that should determine changes in Budget policy and in other such means as monetary and credit policy for maintaining employment should be provided in the main by the state of the employment situation.

Apart from these basic proposals the report enumerates most of the accepted prerequisites of healthy international economic development—positive measures for encouraging the expansion of world trade, regulation of the production, reserves and prices of basic raw materials, development of backward countries. The vision of the framers of this report soars well beyond the range of humdrum and accepted ideas when it envisages international agreements superseding the Lease-Lend agreements "to protect countries that embark on vast schemes for fighting unemployment and creating social security against competition from those which neglect these social duties."

It will be easy for the sceptics and cynics to pick holes in this report. Any extension of mutual aid principles into the post-war period is certainly bound to meet stiff opposition in the donating nations and is unlikely to be achieved in this generation. But that is no reason for not having the objective defined, as it is in this report, and the goal of an international social security plan set. As regards the domestic mechanism of regulation it may be argued that the scale of new investment to be created by State action in a period of depression is unlikely to be provided by indirect means. It is questionable whether a compensatory budgetary policy can achieve the required ends. None the less the principle involved is unexceptionable and it is to be hoped that it will be incorporated in our future fiscal policy even if it cannot achieve all that is expected of it.



# Accountancy and Post-War Economics\*

By O. R. HOBSON, City Editor of the "News Chronicle"

The place of accountancy in the post-war world will, of course, depend on the nature of the post-war world, and of that we can as yet have no certain knowledge. Broadly speaking, two alternative systems are sketched out for us. One is the highly socialised system in which the State, through the departments or through specially organised public corporations, owns and operates the principal means of production. In that system private enterprise would occupy a very subsidiary place and even so would be severely controlled. The other is a capitalist system—not indeed the present system, for we all admit that big reforms are required—but a recognisable modification of it. In that system collective ownership would be confined to a small number of services of a monopolistic flavour, like electricity and transport, and the rest of the field would be left free to private enterprise, though subject no doubt to a good deal more central direction than at present.

At this point it seems essential to bring in the word "planning"—essential because everybody uses it, though few give it a precise meaning. In a sense "planning" is applicable to either system. More usually it implies comprehensive and detailed control exercised by the centre over all economic activities and is thus largely equivalent to "socialism." But nowadays all but the most extreme individualists believe in a good deal of governmental direction.

The real distinction is between a Government which lays down general rules and gives general directions and a Government which dictates in detail what is to be produced and what people are to consume. It is a distinction so felicitously drawn by the distinguished American writer, Walter Lippmann, who, in "The Good Society," likens the community to a system of roads which is elaborately equipped with traffic signals, speed limits, traffic rules, and so on, as is necessary for modern traffic. Everybody using these roads is bound by the rules. But under the free system so long as he obeys the rules a man can go where he likes when he likes. Under the collectivist system, on the other hand, not only is there the control of the rules, but each individual vehicle is instructed as to its starting point, the route it is to follow, its destination and its speed at each point of its journey. I do not suggest that Lippmann's parable is a precise analogy of the modern, highly developed community. All analogies are deceptive, but this one seems to me to provide a useful representation of the free enterprise system on the one hand and the highly collectivised economic system on the other.

\* The lecture on this subject which Mr. O. R. Hobson delivered to members of the Incorporated Accountants' Students' Society of London on October 27, 1942, will be published at a later date with other lectures of the autumn session. In the meantime we have pleasure in presenting this short article which Mr. Hobson has written for ACCOUNTANCY.

## The Probable Post-War System

Which of these systems is to be our destiny after the war? No doubt not an extreme example of either. My belief, however, is that the system in which we shall finally settle down will be much nearer the individualistic type than most people seem to suppose at present. For one thing, it is very unlikely when we reach the end of the war that we shall have time to sit back and carefully plan out at leisure a completely new socialistic State.

Above all it will be essential to get our export trade started again at the earliest possible moment. We shall be much more dependent on exports than we were before the war, owing to the loss of our foreign investments and to the loss of our established markets. That being the case, it will be imperative for the Government to give a more or less free hand to every manufacturer who has the plant and materials to make goods for export and to every merchant who has a selling organisation and useful connections abroad. It will be a matter of saying, "Full steam ahead" to all such, since the price of stopping the machine in order to plan it afresh will be something near starvation for our population.

So I look forward to a reasonably free economic system after the war, but not to a system which will be *laissez-faire* in the extreme connotation of that phrase. On the contrary the rule of law must be strengthened: there must be a new system of "traffic signals." What sort of signals? In my belief signals which will be designed to remove those traffic blocks and congestions which were the chief bane of this country between the wars.

This is not the place in which to discuss unemployment and its remedies at length. But, broadly, the cause of unemployment is a lack of elasticity, a lack of the power of adaptation in the economic system. This country, for example, suffered from mass unemployment in cotton, shipbuilding and other industries. Several of these were doomed, for reasons which could not be altered, if not to extinction, at any rate to drastic contraction. Yet there was no effective machinery by which capital and labour could be shifted from the dying industries to the expanding ones. Our whole system had become inelastic and rigid.

This must be remedied. For the present ossification both capital and labour, associations of employers and trade unions, have had a joint responsibility. Each has striven for privilege and monopoly. After the war we must fight privilege and monopoly wherever they are to be found. That does not mean a reduction of competition, rather an increase, coupled, however, at the same time with a raising of the standards of business conduct. All wrestling is not all-in wrestling, in which every device is justified and applauded. There are the recognised styles with their different rules, and it is for the community to establish rules which will contribute to a higher standard of that form of wrestling which is trade and commerce.

### The Role of Accountancy

Now, how does accountancy fit into this picture, or rather into the two mutually conflicting pictures which I have tried to sketch? In its purely negative humdrum aspect it hardly matters two pins to accountancy which system it has got to work with. Under both the collectivist and the individualist system business transactions have to be recorded, accounts have to be kept and checked and audited. To the extent to which accountancy is merely a mechanical means of measuring and recording money values it is indispensable, increasingly indispensable, to a modern economic system. We shall always therefore have need of accountants. But if we look beyond the dry bones of the profession, it is going to matter a great deal to accountancy—and to the great institutions to which accountants and auditors adhere—which type of world it is going to be.

In a fully collectivised system accountancy will be a national service with functions rigidly defined and limited. Its main function doubtless will be to see that the various central programmes and plans, be they four-year plans or five-year plans, or whatnot, are being faithfully carried out and to report to the central departments of State any industry which is found wanting.

But in the reformed free system what fresh scope will there be for accountancy? If my analysis of the shortcomings in respect of mobility and elasticity of the pre-war system is justified, then accountancy should have a great part to play in the curative treatment. We have come to take joint-stock enterprise so much for granted that we have forgotten that the benefits of limited liability are an important privilege conferred on groups of individuals. The result has been that joint-stock companies have been allowed to acquire monopoly rights and privileges as a matter of course and without anybody detecting that they were being used anti-socially. An important part of the apparatus of privilege-seeking and monopoly-exploiting has been the suppression of that flow of information about a company's business which is necessary for intelligent investment. Joint-stock companies are able to operate to a very considerable extent in the dark. They need not disclose their true profits. They need not disclose which departments of their activities are giving an increasing and which a diminishing return. Hitherto the conclusive reply to objections on those scores has been, "It is a matter for the shareholders. If the shareholders are content to remain in ignorance for fear that disclosure of what they have a perfect right to know would benefit the company's competitors, then there is an end of the matter."

### Company Accounts and the Public Interest

My reply is that it is not an end of the matter, because it is in the public interest, in the paramount interest of adaptability and mobility of the system as a whole, that capital and labour must not be forced, in ignorance of the true facts, into old and decaying industries, but must be directed into industries which contain the promise of expansion.

I hope that the influence of accountants will be used to this end. I hope that the weight of the

organised bodies of the profession will be thrown into the scale in favour of more informative company accounts, of accounts designed to enlighten not only shareholders but the public at large, so that its savings may be directed into fruitful channels rather than blind alleys, and may promote that adaptiveness of industry through which alone full employment can be ensured. I appreciate some of the difficulties of asking accountants and auditors to accept a responsibility to the public as well as to their immediate employers. I hope nevertheless that they will be able in time to develop a tradition of public service which will enable them to resolve this dilemma.

## Wings for Victory Weeks

The following letter has been addressed to practising accountants in the City and County of London by Mr. C. J. G. Palmour, on behalf of a committee representative of the professional bodies mentioned in the letter. (See *Professional Note*, page 79.)

### NATIONAL SAVINGS MOVEMENT "WINGS FOR VICTORY WEEKS"

SIR,—The Right Hon. The Lord Mayor has asked me to co-operate with the other accountancy bodies in support of the effort which has been launched to raise £150,000,000 in the City and County of London during the week from March 6 to 13, inclusive. I have consulted with the President of the Incorporated Society (Mr. Witty), the Chairman of the Scottish Chartered Accountants in London (Mr. Adamson) and the President of the Association of Certified and Corporate Accountants (Mr. Parkes), and it is with their ready concurrence that I issue this appeal to practising members of the profession. It has been suggested to me that Accountants may be able to render material assistance by—

- (1) stimulating Savings Groups in their offices to make a special effort for the week;
- (2) using their influence wherever possible to make the week a success;
- (3) investing as generously as possible.

We have already had great calls made upon our resources through the medium of War Weapons and Warships Weeks with eminently successful results, but I venture to endorse what the Right Hon. The Lord Mayor said on launching the appeal—its very designation cannot leave us in any doubt as to our duty in responding. The target is a high one but, again to quote the Right Hon. The Lord Mayor and the Secretary of State for Air, our effort will be watched by Allies, friends and foes alike as an earnest of our determination to win through to final victory, and by now assisting to our utmost we shall ensure that our country's finances may be such as to enable us to benefit from the blessings of peace and take our full part in the re-ordering of world conditions.

Yours faithfully,

CHAS. J. G. PALMOUR,

President of The Institute of Chartered Accountants in England and Wales.

January, 1943.



# Simplified Income Tax Return Forms

[CONTRIBUTED]

Readers will already have seen in their newspapers references to the simplified return forms for 1943-44, copies of which we have before us. Last year the return for weekly wage-earners was simplified; this year the process has been extended to the forms for salaried workers, businesses and farmers, as part of the campaign to make income tax more intelligible to the eleven millions of people who now have to pay it.

The printing is bolder, the language simpler, and the new arrangement of the various categories of income is much more convenient. Much of the stilted official wording that was so confusing has gone. As an example, the heading "Return of Income of the year 1941-42 ended April 5, 1942; and Claim for Reliefs for the year 1942-43, ending April 5, 1943," which caused much confusion, is replaced by the simple phrasing: "Year 1943-44; Return of Income and Claim for Allowances."

The complications hitherto caused by the division of the forms into sections have disappeared. All that is now required is the "Statement of Income for the year ended April 5, 1943," which is all on one page and has intelligible sub-headings (including one for "Interest from Building Societies," which is welcome), and the "Statement of Ground Rent, Interest, etc., Payable" (which also includes a sub-heading for "Interest paid on Building Society Mortgage or Loan").

The position of wife's income is clarified by a simple statement: "If you are married and your wife is living with you, include her income—see Note 1." Employees are helped by a much clearer indication of what deductions can be claimed. It is also an improvement to show "Dividends, Interest, Annuities, etc., from which Tax is Deducted," immediately after "Interest, etc., from which Tax is not Deducted." It has been possible to reduce the number of separate headings without any loss of completeness. We have only one criticism here, that it is not apparent how income from a partnership should be entered.

Farmers may still be "awkward," as they have to decide whether to fill in the heading "Occupation of land assessable under Schedule B" or "Trade, Profession or Vocation—including profits from farming where not assessable under Schedule B." There appears to be no way of simplifying that aspect, and the very clear and full notes on this point probably go as far as ingenuity can devise.

The claim for allowances is set out more logically and certainly more intelligibly: for example, the new form requires the taxpayer who claims age relief to insert the date of his (or his wife's) birth, and not, as hitherto, to give his or her full names as well. It is certainly more logical that the claim for children follows that for the wife, and not, as formerly, that of the housekeeper, and "Daughter's services necessary owing to old age or infirmity" will be understood more readily than the old "Daughter upon whose services the claimant is compelled to depend, etc."

Accountants will be pleased that there is only one place for a signature. How many times has a form had to be returned to a client because it has been signed in the wrong place?

The sheet of notes enclosed with the forms has been rearranged and rewritten in simpler language. "How to fill up your form" is a heading that may tempt taxpayers to read the notes; it is much more human than the old "Part I Notes in regard to the statement of income of the year ended, etc., etc."

There is no doubt that these forms and the notes are a considerably greater step forward than the last attempt at simplification. Accountants will not notice much difference from the practical viewpoint, of course, as they know their way about the old forms so well. It will, however, be a step forward if clients understand them better.

No indication is given as to whether other forms are to be abolished; that remains to be seen. We are not convinced, however, of the necessity for both form 11A (Business) and form 12A (Salaries). The only difference between them is that Trade comes first on the one and Employment on the other, more space and detail being allowed for the main source. We should have thought that, with slight modification, the same form would serve, particularly as many taxpayers come under both categories.

In the course of April next, every accountant's office will be flooded by return forms, complete with the notes, which are mere redundancies to the accountant. Would it be of any interest to the Crown and would it save any printing and paper if a "drive" were made to collect these from accountants' offices?

Despite our welcome to the efforts of the Department towards simplification as described above, we cannot help wondering whether more benefit would have been obtained by a simplification of the assessments and demands. We have many instances of demands which are incapable of being agreed without much correspondence, particularly in the case of Schedule A. This is often due to the failure of the Inspector of Taxes to issue Form 70 showing the allocation of allowances, a failure usually caused by his waiting for information from another District. Yet, if the Inspector cannot issue Form 70, how can the taxpayer be expected to understand his demand? No doubt, changes here would mean a re-organisation that cannot be faced at present, but we are certain that the machine would run more smoothly if much of the creaking machinery were removed.

Whoever is responsible for the new forms and notes has evidently cast aside tradition; the nearer approach to colloquial English and the discarding of legal jargon leads us to hope that attention may be paid to the machine before long. It may be that force of circumstances may in due course force simplification of the machinery owing to insufficient staff to work it. At present, the attempt to "go through the motions" with inexperienced staffs must give every Inspector what is so aptly called today "a headache." The results certainly cause accountants many headaches.

## The Solicitors' Compensation Fund

[CONTRIBUTED]

Frauds by solicitors have always caused a public sensation. This is due to the fact that the profession in general proves itself so worthy of complete confidence that the comparatively few cases in which that confidence is betrayed cause a much greater shock than if that confidence were less deserved.

The Law Society has for a number of years had the maintenance of professional rectitude under the most careful scrutiny. Within recent years the whole of the disciplinary system has been overhauled, and rules have been made as to accounts which ensure as far as rules can do so that no solicitor shall use his clients' moneys without being fully conscious of what he is doing. The Solicitors Act, 1941, which for the most part came into operation on January 1, 1942, has made further amendments in the law in order the better to secure a due standard of integrity.

There are two provisions which only come into force when the Lord Chancellor so determines. One, which is contained in Section 1 of the Act, is directed to the proper keeping of accounts and a failure to obtain a prescribed accountant's certificate will become professional misconduct. This provision cannot be made operative until after the war. The other is a statesmanlike attempt by the whole profession by taking corporate action to redress or mitigate any losses which the public may sustain by reason of the dishonesty of a solicitor or of an employee of a solicitor. This has been brought into operation as from November 16, 1942.

### The Fund

By Section 2 (1) of the Act the Law Society is directed to form a Compensation Fund, made up by contributions from solicitors and managed by the Council of the Law Society or a committee or committees of the Law Society. This Fund is to be held for the purposes declared by Section 2 (2) and the First Schedule to the Act. The contributions are compulsory and are to be paid at the time of taking out the annual practising certificate, which can be withheld from any solicitor who does not pay his contribution. The annual amount is £5, or such less sum as the Council may fix, but for his first three years a newly qualified solicitor has only to pay one half, and the Council may remit all or part in the case of a solicitor engaged in national service.

As the scheme has come into operation, applications for grants may come in at once, and the building up of an adequate fund may take years even if such applications are few. The Law Society is therefore empowered (1) to invest in trustee securities any money that is not immediately required, (2) to borrow money for the purposes of the Fund, and (3) to effect insurances. This, it is anticipated, will enable the Law Society to deal with current claims and also to build up a proper reserve. All moneys received on account or for the purposes of the Fund have to be paid into it.

### Purposes of the Fund

By Section 2 (1) of the Act the Fund is declared to be established in order to enable the Law Society to make grants for the purpose of relieving or mitigating losses sustained by anyone in consequence of dishonesty on the part of a solicitor or his clerk or servant in connection with (a) his practice or (b) any trust of which he was a trustee. It is not necessary that the solicitor should have had a practising certificate at the time of the dishonest act, nor is a claim to be rejected merely because the solicitor may have subsequently died or retired or been suspended or struck off the rolls.

No claim will be entertained in respect of any dishonest act committed before the section is brought into operation. It is also a condition that every applicant shall give notice to the Law Society in accordance with the Rules (Solicitors' Compensation Rules, 1942; S.R. & O., 1942, No. 2357/L36). This must be done within six months of the loser becoming aware of his loss, but the Council may extend this period up to two years, and may in extreme cases possibly waive the requirement. The notice may be accompanied by an application. If so, then full particulars must be given in the form of application. If not, then the particulars must be given in the notice, and this must be followed as soon as practicable by an application which in every case must contain the prescribed particulars, as directed by the forms annexed to the Rules. The application must be verified by a statutory declaration and it follows that any wilful misstatement will be punishable under the Perjury Act. The Council may allow amendments.

### Grant Discretionary

There is no legal obligation on the Society to make any grant, nor is it fettered in any way in its method of considering applications. If an inquiry is thought necessary the witnesses may be required to give evidence on oath or affirmation.

### Documents

Obviously the success of most applications will largely depend on the relevant documents, and applicants must give particulars of such documents. The Law Society is, however, not bound to wait until it receives a notice from a loser. That might result in the disappearance of vital documents. If the Council have reasonable cause to believe that a solicitor or his clerk or servant has been guilty of dishonesty, they may by written notice require production or delivery to any person named by them of all deeds, securities, papers and other documents in the possession or control of the solicitor or his firm, and failure to comply with such a notice is made a summary offence. If need be, the Law Society may apply to the High Court for an order for such production or delivery. Written notice setting out all documents of which possession has been taken must be given to the solicitor and to the



person from whom they have been taken. Within 14 days after such notice the solicitor or other person may apply to the High Court for an order to return them. If no such application is made, the Council deal with the documents as directed by the persons to whom their enquiries show that they belong.

Further, if the Council are satisfied that a solicitor or his clerk or servant have been guilty of dishonesty in relation to the matters mentioned, the Law Society may apply to the High Court for an order that no money shall be paid out of any banking account of the solicitor or his firm without leave of the High Court. Regulations have been made as to such applications (S.R. & O., 1942, No. 2454/L37). Shortly, they are to be made by originating summons in the Chancery Division.

#### Subrogation

It is not intended that the Fund shall enable a loser to make a profit or even show undue negligence

in pursuing his available remedies. If the Council do make a grant then the Law Society is, up to the amount granted, subrogated to (a) any rights and remedies of the applicant against the solicitor or any other person in respect of the loss, and this covers rights against personal representatives and others administering the delinquent's estate, (b) any rights and remedies of the applicant against any other person in respect of the loss, and (c) any other rights and remedies of the loser in respect of the loss. Further, the applicant or his personal representatives or anyone administering his affairs has no right in bankruptcy against the solicitor or any other person to receive any money on account of his loss until the Law Society has been reimbursed.

It would appear that the scheme is calculated to insure clients and others against, or in any event to relieve or mitigate, loss due to a delinquent solicitor or his clerks.

## Retail Trade Conditions

By C. C. ANDERSON

The prophets have so often been confounded in this war that we have long ceased to marvel at the discrepancy between prediction, whether expert or inexpert, and the actual course of events. Few people at the outset of the war would have cared to forecast that our retail trade organisation could function as smoothly as it has done under the weight of emergency legislative enactments and widespread bombing. Even a year ago, when the shopkeeper's ability to serve the public and earn himself a living in the most discouraging circumstances had been amply demonstrated, it was difficult not to be pessimistic about the outlook for retail trade. General endorsement was given to the verdict of the Retail Trade Committee, pronounced in January of last year, that there was "a bleak prospect for shopkeeping in 1942." Three members of the Committee, it is true, gave their opinion that the full effects arising from the reduced volume of goods might not be felt for some time, owing to the number of shops which had been closed down already and to the undoubted existence of cushions of stock not subject to coupon control. The general impression created by the report was, however, that shopkeepers were in for a year of unrelieved hardship. The absence of exact data is exasperating, but as a matter of common observation things have not turned out so badly as all that.

#### Food and Non-Food Shops

The number of retail shops in existence before the war is variously put at between 750,000 and over one million. More than half of these were engaged mainly in selling food and drink, and for that reason they have received specially considerate treatment. Supplies to them have been restricted through the ration book system, the Ministry of Food's import policy and the quotas imposed on manufacturers and producers. Prices have, too, been fixed for a great many lines. But these have in general been sufficiently high to satisfy the retailer. The chairman of one important food chain has, indeed, declared that

in being made to sell at fixed prices his shops have been forced to take more profit than they would otherwise have considered reasonable. And the schedule of prices recently issued for green vegetables was well above trade expectations. This relative generosity has extended to problems of man-power and woman-power, in which a sharp distinction has been drawn between the food and non-food trades.

It is very different with the non-food trades. Here restrictions of supplies have been more serious. The picture drawn by the Retail Trade Committee at the beginning of 1942 was this: for the varied range of clothing and footwear trades, consumer coupons set the upper limit of trading possibilities at about half the pre-war volume, while in the other trades the ceiling was fixed by the raw material controls or manufacturing quotas, which usually did not exceed 20 per cent. to 25 per cent. of pre-war volume. Since then the clothing coupons have been made to go further by extending both the period through which they must last and the range of articles for which they must be surrendered, and, of course, controls and quotas have become progressively more onerous.

Apart from supply problems, the non-food shops have had to cope with restrictions on deliveries, circularisation and packaging, and with a continued drain of labour, both male and female, into the Services and the factories. This last problem is one of particular seriousness. The withdrawal of men from the shops has entailed an increasing dependence on the services of women workers, but in December the Ministry of Labour announced the call-up of women up to 35 years of age in retail distribution generally and up to 45 years of age in special luxury or semi-luxury sections. When questioned about the possible effect on one-man businesses and other small concerns Mr. Ernest Bevin, the Minister of Labour, was non-committal. That is not to say, however, that the larger undertakings can be viewing the future with equanimity, for Mr. Hugh Dalton, the President

of the Board of Trade, has declared that the bigger enterprises will have to yield up more space for storage and other Government purposes.

### Sharing Supplies

The difficulty of reconciling war-time rationalisation of the non-food retail trades with the preservation of a due balance between the big undertakings and the small man is almost insuperable. This may not justify, but it does explain, the official attitude towards retail concentration. The choice lies between a careful organisation of the distributing system, so that further restrictions of supplies and continued withdrawal of labour leave the system operating with optimum efficiency, and a policy of inaction which allows these factors to operate arbitrarily. Facile organisation would concentrate on the big establishments and the chain stores, since these are more susceptible of control. Any more serious effort at rationalisation would be bound to have features in common with the scheme proposed by the Retail Trade Committee midway through 1942. This proposed a levy on non-food retailers who should continue trading, to help those who, as a result of war conditions, would have to withdraw from business. The scheme was open to the objection that the levy might ultimately become a new charge on the consumer, and for this and other reasons the plan was dropped. Instead, traders were left with the limited protection of the Liabilities (War-time Adjustments) Act, of which they were urged to make more use, and, in addition, small retailers were assured that they would receive a fair share of available supplies through the operation of a percentage system based on a standard year.

It remains to be seen whether the new system will have sufficient flexibility to ensure that allocations of supplies take full account of movements of population brought about by evacuation and by such labour transfers as the Minister of Production has envisaged in connection with proposed changes in the bias of our industrial war effort. It does nothing to prevent demands for man-power and woman-power from falling haphazard. If these demands are a crucial factor, so is the increasing stringency of the stock position. Changes in the volume of retail stocks have been masked in the official Board of Trade figures by the enhanced level of values and, in particular, by the increase in the Purchase Tax on luxury goods from 33½ per cent. to 66½ per cent., imposed in the last Budget. Allowing for this the position has now been reached where nothing is concealed under the counter and, in many lines of trade, precious little is available for display on top.

The quantitative aspect of the stock situation is, however, not so important for its bearing on retail trade prosperity as the qualitative aspect. Under the Prices of Goods Act, 1939, traders were able to gear selling prices up from pre-war levels by making such additions as were reasonably justified by subsequent changes in the costs of manufacture and distribution. Reasonable justification embraced the heavier ratio of expenses which resulted from a fall of turnover, and in a sellers' market this meant that most businesses could at least cover their expenses whatever

the level of turnover. The Goods and Services (Price Control) Act, 1941, changed the position, for it allowed the Board of Trade to fix maximum prices or maximum margins or both for the manufacture and distribution of goods, and also for services, in the non-food trades. It was first applied in a comprehensive fashion in the utility, clothing scheme. In contrast with the position in the food trade, the profit margins allowed are by no means generous—there have indeed been loud and repeated protests on this score. In particular they bear hardly upon the retailer accustomed to selling more expensive merchandise carrying a higher "mark-up." The point is that utility goods now comprise a high proportion of stocks, for the Government is concerned to see that people with moderate means are catered for and materials and labour applied to maximum advantage.

At the point where the Board of Trade takes an interest in the quality of the goods sold, through the utility scheme, retailers have to operate on fixed margins of profit, regardless of the class of trade they usually conduct or the volume of their turnover. That, combined with the labour problem, gives reason for believing that the Retail Trade Committee's prediction for 1942 may come true in 1943.

### THE LATE ARTHUR EDWIN PIGGOTT

By the death on January 17 of Mr. Arthur E. Piggott, F.S.A.A., in his eighty-second year, the Society of Incorporated Accountants has lost one of its earliest members, who during the whole of his career devoted himself to its affairs. Mr. Piggott was admitted a member of the Society in January, 1886, very shortly after its incorporation. In conjunction with the late Mr. Frederic Walmsley he founded the Manchester District Society in 1886, and became its first Honorary Secretary. He held that office for a period of fifty years, resigning in 1936, when his son and partner, Mr. Halvor Piggott, F.S.A.A., succeeded him. This period of service was broken only by a short period from 1901 to 1904 when he became President. Simultaneously he served as a member of the Council of the Society from 1886 to 1936. This is a unique record. The energy and initiative of Mr. Piggott and Mr. Walmsley in the early history of the Society were a source of strength and inspiration both to the members in Manchester and to the Society as a whole.

In 1889 Mr. Piggott tried to enlist the support of his colleagues and friends in the Society to the admission of women to membership. His progressive view was not then acceptable, but he rejoiced when in 1918 the Society voluntarily took power to admit women.

He carried on public practice in Manchester and remained a partner in his firm, Arthur E. Piggott & Co., almost up to the time of his death. Mr. and Mrs. Piggott and members of their family were regular attendants at the Society's conferences, and he found much happiness in his work on behalf of Incorporated Accountants. Both in his professional and in his family life Mr. Piggott enjoyed a wide circle of friends. He was a pioneer in the cremation movement, and for many years he served as a member of the governing body of the Unitarian churches. He always found much pleasure in his garden at his home in Macclesfield.

The President and Council of the Society were represented at the funeral by Mr. Joseph Turner, and the Manchester District Society by Mr. G. A. Marriott and Mr. J. A. Hulme, Past Presidents.



**TAXATION****Commission Based on Profits**

Many managing directors and senior employees have a considerable portion of their remuneration based on a percentage of the net profits. In such cases, when the agreement is entered into, all parties seem to be perfectly clear what is meant. Yet, when the crucial moment arrives when effect has to be given to its terms, it is found that the interpretation of employer and employee is not the same. Indeed, it has been known for solicitor and accountant to differ from both—and from each other.

It is therefore of the utmost importance that any such agreement shall contain a clause or schedule setting out beyond any doubt what is meant by "profits." It is nowadays common to provide that the auditor's certificate on the point shall bind all parties, but even then it should not be left to the auditor to decide on certain items.

There should be a clear statement what, if any, income not derived from the main business is to be included, e.g., income from investments, and whether depreciation is to be charged and, if so, at what rates. It is also essential to include a provision as to whether taxes such as N.D.C. and E.P.T. are to be deducted, and also whether the commission is to be calculated on the profits before or after charging the commission. Moreover, is interest on borrowed money to be deducted, or interest on capital taken into account?

In an agreement recently before the writer it was provided that income tax was to be charged before calculating commission. If such a provision is made, it is vital to define what is meant by income tax, how it is to be calculated (e.g., on the Schedule D, Case I, assessment for the year of assessment in which the accounting period ends, or ending in the accounting period, or an apportionment of both; or on the actual profits as adjusted and, if so, at what rate, and so on). In the particular agreement in question, the peculiar wording involved the deduction also of E.P.T. and N.D.C., which meant that the employee was being deprived of what it was intended he should have, and an amendment had to be made.

**Recent Court Decisions**

Unfortunately, many agreements have not been drawn up to include exact definitions, and it will be helpful to summarise two recent decisions of the Courts. It is not proposed, in view of the exigencies of space, to re-

capitulate the history of the matter, which is just as well, as E.P.D. cases gave no clear rule.

The latest case, *Edwards v. Saunton Hotel Co., Ltd.* (1942, 195 L.T.N. 8) is one of the most helpful. This case was the subject of a Professional Note in our January issue. Here the commission was a percentage of the sum available for distribution at the end of each year. The company contended that the commission was to be calculated after deducting (1) the commission; (2) income tax; and (3) depreciation on the "reducing value" system. It was held, however, that the first two contentions were wrong and that in the case of depreciation the straight line system was to be applied.

Although this case dealt with profits available for distribution, there can be no doubt that similar principles must be applied in ascertaining "profits," unless there is some provision to the contrary in the agreement itself.

Even more useful (though not dealing with commission) is the decision in *Re the Agreement of G. B. Olivant & Co.* (1942, T.R. 295, summarised in ACCOUNTANCY, December, 1942, page 56) where the sum in question was "a sum equal to one-half of the sum which the auditors . . . shall certify to be the profits," and a schedule to the agreement required the auditors in making their computations to adopt the general principles of ordinary commercial practice. The question in dispute was whether N.D.C. and E.P.T. were deductible. The Master of the Rolls, in his judgment, said, *inter alia*: "It is indisputable . . . that, for the purpose of drawing up the profit and loss account of a trading company, excess profits tax must be deducted, if ordinary commercial practice is to be followed. It is unlike income tax in that respect; and, indeed, it is not merely common knowledge, but common sense, that the divisible profits of a trading company cannot properly be ascertained without making that deduction." (He used the term E.P.T. as embracing N.D.C. for the purposes of his remarks.)

While something may turn on the difference between "trading profits" and "profits available for distribution" or between either and the term "net profits" so far as some items are concerned, it can safely be said that this is not so in regard to the deduction of E.P.T. and N.D.C. or the non-deduction of income tax, with which we are principally concerned here.

**Taxation Notes****E.P.T.**

In estate companies it is understood that any expenses allowed in maintenance claims under the Rules of Schedule A may be deducted as expenses in computations for N.D.C. and E.P.T.

**Sur-tax on Controlled Companies**

An interesting case has just come to our notice. A direction under Section 21, Finance Act, 1922, resulted in the income of company A. being apportioned mainly to C., partly by direct apportionment and partly by sub-apportionment through company B. The income of company B. was also apportioned to C. as he was the sole person interested in company B., but had drawn nothing from it; children of C. were also interested in company A. As dividends had been paid by company A.,

relief was given to company B. and to C. for these dividends so far as received by them respectively.

The result was that C. paid the whole of the sur-tax assessed in respect of company A., but refused to pay that assessed in respect of company B., which company paid it. C. had therefore paid the sur-tax on the dividend received by company B. from company A.

In the following year, no direction was made on company A., but a direction was made on company B. Company B. claimed to deduct the dividend received from company A., but the deduction was, of course, refused, as there was no double taxation. The persons interested were mystified, until it was explained that if a direction were subsequently made for the year in question, relief for sur-tax on the dividends would be given by repayment, under Section 21 (4). This con-

fusion often arises where the tax is not paid by the person to whom the income is apportioned.

### Obiter Dicta

"What is allowed in one business could not be allowed in another; what is wholly extraneous in one business may be germane to another" (*Morley v. Lawford & Co.*, (1928), 14 T.C. 244).

"Once it has to be conceded that a debit is a proper one in accounts under Schedule D, the fact that a similar deduction is authorised by the statute under another schedule is irrelevant" (*C.I.R. v. Scottish Central Electric Power Co.* (1931), 15 T.C. 799).

## Recent Tax Cases

By W. B. COWCHER, O.B.E., B.Litt., Barrister-at-Law

*Sur-tax—Undistributed income of company—Validity of direction by Special Commissioners—Validity of apportionments—Finance Act, 1922, Section 21, First Schedule; Finance Act, 1927, Section 31; Finance Act, 1928, Section 18; Finance Act, 1936, Section 20 (1); Finance Act, 1937, Section 14 (3).*

The facts in *C.I.R. v. F.P.H. Finance Trust, Ltd.* (K.B.D., October 26, 1942, T.R. 283), were extremely complex, and limitations of space preclude anything but an inadequate notice. In effect, it was held that a most elaborate scheme for reducing sur-tax liability had failed of its object. Two aspects of the case are worthy of mention. Section 18 of the Finance Act, 1928, as amended, enables a company potentially affected by Section 21 of the Finance Act, 1922, to take certain specified steps, and, where this is done, the powers of the Special Commissioners to take action become limited in point of time. The company contended that there had been "substantial compliance" with the requirements of Section 18 (1), and that the Special Commissioners were by Section 18 (3) precluded from action. Wrottesley, J., held that the Special Commissioners had a duty to perform, and that sub-sections (1) and (2) of Section 18 had not been complied with. Their decision as to the validity of the direction was therefore correct.

Upon the question of apportionments, by a very curious transaction, the capital structure of the company had been altered in 1934, with the result that the original capital had been converted into preference shares with a fixed dividend but with the residual rights in a winding up, and 1,000 £1 ordinary shares had been created, giving them the residuary income rights but only the right to a return of capital in liquidation. All these new shares were issued at par to a public company not liable to sur-tax; and, as a consequence, apportionment in accordance with income rights would have been futile. But, whilst a Mrs. Latilla and her two daughters were the only persons ultimately interested in the preference capital, Mr. Latilla, the husband of Mrs. Latilla, was in control of the public company. And, as only £146 had been distributed out of £645,192, it will be seen that the amount at issue was of more than ordinary importance. Wrottesley, J., held that Mrs. Latilla and her two daughters had an interest in the capital and income of the respondent company and that, therefore, its undistributed income could be apportioned to them. He rejected the contention that "interest" in sub-section (7) of Section 21 of the Finance Act, 1922, had a wider meaning than in the First Schedule of that Act. The Special Commissioners had found that whilst the legal rights to the residuary income of the respondent company had been transferred to the public

### Estate Duty on Value Payments

A value payment under the War Damage Act must be taken into account in aggregation, but the duty can be paid under the following alternatives:—

(a) Value the value payment (including the 2½ per cent. interest payable thereon) as at the date of death, and pay duty thereon, with interest on the duty from date of death to date of payment, or

(b) Postpone payment until the value payment is received, and pay duty on the amount received (including interest), with interest on the duty from the date of receipt of the value payment to date of paying the duty

company, there was an "understanding" that dividends were to be limited. And, as Mr. Latilla was in control, he could see that this was observed.

*Sur-tax—Divorce suit—Settlement—Covenant of settlor to make up net income to fixed amount—Covenant extending to personal representatives of beneficiary.*

In *Re Sharman's Settlement* (Chancery Division, October 26, 1942, T.R. 303), Mr. Sharman and Mrs. Sharman had been divorced in 1926, and, by a settlement in 1928, Mr. Sharman transferred investments to trustees who were to pay the income thereof to Mrs. Sharman during her life, and, as a separate covenant, it was provided that if the net income of the trust fund for any year was less than £3,000 after deduction of "income tax and super-tax and any other tax on income" the covenantor would pay to Mrs. Sharman or her personal representatives such an amount as would make up the said net income to £3,000, and, so, in proportion for less than a year. Mr. Sharman died in 1928, and Mrs. Sharman died in December, 1939. In assessing her sur-tax liability her income from the trust fund for 1938-9 had been taken as the basis of that year: and the tax was payable upon January 1, 1940. In addition, there was a liability to sur-tax in respect of her income from April to December, 1939.

The question was whether these two sur-tax liabilities fell upon Mr. Sharman's estate or upon Mrs. Sharman's legal personal representatives. Bennett, J., held that it fell upon the former because the effect of the settlement provisions was to free the wife from these taxes, whether payable before or after her death.

*Income tax—Annuities—Pre-war will—Post-war agreement—Whether tax-free provision varied—Finance Act, 1941, Section 25.*

In *re Westrik* (Chancery Division, October 28, 1942, T.R. 305) was another case where the issue was whether the restriction of tax-free annuities imposed by Section 25 of the Finance Act, 1941, had been made inoperative by variation on or after September 3, 1939. Mr. Westrik had made his will in 1930 and he died in 1933. He gave all his property to his trustee (the Public Trustee) on the usual trusts. Out of the income of the trust fund were to be paid seven small annuities free of income tax. Subject to these, his wife was to be paid £4,000 per annum for her life, and after her death the capital and income were to be paid to certain charities. By a codicil, an additional legacy of £1 per week free of legacy and other duty was given to a Mr. Horley. The widow died in 1940; and in the same year an agreement was made between the parties then interested by which a sum was set aside to answer the annuities and the tax



thereon, and, subject to this, the whole of the residue was released to the charities; and, by other provisions, further releases were to be made as the annuities ceased. Farwell, J., held that the provision of the will had not been varied in any way. All that had been done was that the annuitants had forgone their right to charge the whole of the estate with their annuities. Payment ought, therefore, to be made at the reduced rate provided by Section 25.

It is difficult to see how there should have been any doubt upon the point.

*Income tax—Annual payments—Profits and gains not charged to tax—Rule 21, General Rules, Income Tax Act, 1918.*

In *Sir Arthur Jackson's Trustees v. C.I.R.* (K.B.D., November 2, 1942, T.R. 309) the testator had directed his trustees not to pay income to his two daughters but to raise and pay to each of them yearly the clear sum of £250 "free of all deductions in respect of death duties of any kind, income tax, costs or otherwise, out of the capital of the trust fund" during their respective lives. The Special Commissioners had decided that the payments were income, and Wrottesley, J., affirmed their decision. He said that the giver of a sum whether by will or otherwise could not permanently endue it with the character of capital or income for income tax purposes. It was argued that the payments were "of capital" instead of "of income" as found by the Special Commissioners. But the latter had not said that they were not payments "out of capital." His judgment was based upon the cases of *Brodie's Trustees v. C.I.R.* (1933, 17 T.C. 432) and *Lady Michelham's Exors. v. C.I.R.* (1930, 144 L.T. 163, 15 T.C. 737), and, put shortly, was that what governed the matter was not the character of the payment at its source but its character at its destination.

The distinguishing feature of the case was the ingenious attempt to stamp the payments with the character of capital.

*Sur-tax—Undistributed income of company—Settlement—Dividends paid to trading company and credited to settlor's account—Whether settlor "able to secure"—Whether settlor a person with no relevant interest—Finance Act, 1922, Section 21; Finance Act, 1939, Section 15.*

*C.I.R. v. L.B. (Holdings), Ltd.* (K.B.D., November 3, 1942, T.R. 313), was a case where once more the Court showed itself loth to appreciate the efforts of legal ingenuity to reduce the sur-tax burden. Limitations of space preclude extended notice, but two points are worthy of mention. Section 15 of the Finance Act, 1939, made it possible for the Special Commissioners to treat as a member of a company within Section 21 of the Finance Act, 1922, anyone "able to secure" that income or assets of the company will be applied directly or indirectly for his benefit. Here, the settlor had only been able to benefit by a breach of trust; and the question was whether "by lawful means" was to be understood after the word "secure," using the word "lawful" as meaning without committing a breach of trust. The Board of Referees had decided against the Crown; but Wrottesley, J., reversed this, and pointed out that by sub-section (3) the section was to apply if the person affected was able to secure "by any means whatsoever, whether he has any rights at law or in equity in that behalf or not."

The second point was the extent to which the settlor, although a trustee, had a "relevant interest" within sub-section (6) of the said Section 15. It was argued that, as trustee, he had all the shares and the whole of

the "relevant interest." Therefore there could not be an apportionment to him under sub-section 2 (c) to a greater extent than the whole of the income. The Crown's reply to this, approved by the Judge, was by reference to Section 21 (7) of the Finance Act, 1922.

*Schedule D—Provision of patented plant in other person's premises—Restrictive covenant binding suppliers—Payments for rights granted—Whether capital or trade income.*

In *Margerison v. Tyresoles, Ltd.* (K.B.D., November 4, 1942, T.R. 321), the respondent had a patented process called tyresoling for fixing new treads to old tyres either upon the company's premises or at places where the respondent had erected plant for "distributors" under a standardised form of agreement. By this agreement, *inter alia*, the company granted certain exclusive territorial rights to each distributor in return for payments ascertained in a specified manner. The agreements were for five years, but determinable in certain circumstances. The plant was rented from the respondent and not sold. The General Commissioners had found that the payments in respect of the rights assigned to the distributors were capital; and their decision was upheld by Wrottesley, J., who found that it had not been proved that the Commissioners had committed any error of law. He said it was possible that they thought that the trade was the re-treading of tyres and not the dealing in restrictive covenants, and that, if they did, he would certainly not disagree.

The judgment does not repeat the facts of the case stated, and, pending the full report, comment must be restricted to the observation that the respondent would seem to have been fortunate in the Commissioners' decision.

*Income tax—Personal allowances—Non-resident British subject—Restriction of relief—Dominion income tax relief—Inclusion of income not remitted—Finance Act, 1920, Sections 24, 27—Finance Act, 1927, Sections 38 (2), 40.*

The case of *Mackillop v. C.I.R.* (K.B.D., November 10, 1942) arose out of Section 24 of the Finance Act, 1920, which disentitles a non-resident to personal reliefs except in certain cases. The appellant was within the exceptions, and, in consequence, was entitled to the proportionate relief given by the section. In computing the allowances, etc., due, he claimed that Dominion tax relief given by Section 27 of the 1920 Act fell to be taken into account, but that his Dominion income not remitted to this country should not. He won upon the first point and lost upon the second. Wrottesley, J., said, as regards the first point, that it had been argued that Section 24 did not say that the non-resident was to be treated as a resident, but he held that impliedly it did, and more. It exposed him—for the purposes of calculation—to tax where he would not be taxable, and, with the disadvantages of the hypothesis, must go also the advantages unless there were clear words to the contrary. The second point was clearly not arguable.

An interesting little case in which the appellant, who appeared in person, scored a very good point.

*Schedule E—Office or employment—Director and manager of company—Restrictive covenant operating after termination of employment—Payment for entering into covenant—Income Tax Act, 1918, Schedule E, Rule 1.*

The case of *Beak v. Robson* (House of Lords, December 15, 1942, T.R. 349) was noted in our issues of May and September, 1942, when attention was drawn to the seriousness of the decision that a payment in respect of a restrictive covenant operating after the termination of an employment does not constitute taxable income.

In the House of Lords the decisions of the lower courts were unanimously affirmed. The Lord Chancellor, giving the sole judgment, said he proposed to say nothing upon the Crown's argument that a decision in favour of the respondent might involve the apportionment of the remuneration of a manager whose agreement included a restrictive covenant. (See note by the writer in the November issue of ACCOUNTANCY upon this point.)

As the Lord Chancellor observed, the agreement in the case was admitted to be a *bona fide* contract; but this fact will not be of much value to the Revenue, and legislation may be expected.

*National Defence Contribution—Dividends—Controlling interest in intermediate company—Holding of bare majority of shares—F.A., 1937, Section 19: 4th Schedule, Part I, para. 7 (b); F.A., 1920, Section 53 (2) (b).*

In *British-American Tobacco Co. Ltd. v. C.I.R.* (House of Lords, December 10, 1942, T.R. 339), a case noted in our issues of July and November, 1941, the House of Lords unanimously affirmed the decisions of the lower courts. A "controlling interest" for the purposes of the tax does not mean an interest of a proprietary nature, as argued for the company, nor does it require a holding of shares sufficient to pass a special resolution or other resolution for which a special majority is required. Control may be direct or indirect, and, in the words of the Lord Chancellor who gave the sole judgment: "I find it impossible to adopt the view that a person who, by having the requisite voting power in a company subject to his will and ordering, can make the ultimate decision as to where and how the business of the company shall be carried on, and who thus has in fact control of the company's affairs, is a person of whom it can be said that he has not in this connection got a controlling interest in the company." He considered a bare majority to be sufficient and approved the decision in *B. W. Noble Ltd. v. C.I.R.* (1926, 12 T.C. 911).

*Income Tax—Unincorporated body for the purpose of providing choral concerts—Trusts of permanent character—Whether entitled to exemption as charity.*

In *Royal Choral Society v. C.I.R.* (K.B.D., October 12, 1942, T.R. 269) the appellant, an unincorporated body founded in 1871, had no deed or document regulating its constitution or conduct until 1939, when a constitution and rules were adopted, which Macnaghten, J., held to be an enforceable trust of permanent character for promoting the practice and performance of choral works. The whole of the income of the society was to be applied solely towards this purpose and in the event of winding-up any surplus had to be applied to charitable purposes of specified character. Macnaghten, J., distinguishing the case of *Re Allsop* (1884, 1 T.L.R. 4) and following *C.I.R. v. Yorkshire Agricultural Society* (1928, 1 K.B. 611, 13 T.C. 58), allowed the claim for exemption.

*Tax-free payments—Annual payments for upkeep of landed estate and maintenance of dogs and horses—Whether stated amounts—F.A., 1941, Section 25.*

In *Re Hawkins; King v. Hawkins* (Chancery Division, December 9, 1942, T.R. 341), a testator devised certain freeholds to trustees to permit his wife, during her widowhood, to reside rent free at a mansion house, the trustees paying all "rates, taxes, outgoings, repairs, and insurance." He also directed his trustees to pay his wife, so long as any of his dogs and horses survived, "clear of all deductions including death duties and income tax," three shillings a week for each dog and fifteen shillings a week for each horse. The executors

took out a summons to determine, *inter alia*, whether the restrictions imposed upon tax-free payments applied.

Forwell, J., held that the provision regarding the upkeep, etc., of the mansion, whilst ascertainable in each year, was not for a "stated amount" within Section 25 (1) of F.A., 1941, within any proper definition of the term. Upon the other hand, those relating to the dogs and horses were, although the actual payments would depend upon the number of dogs and horses in existence.

*Schedule A—Annual value—Office building with several tenancies, assessable as one house or tenement—Lift service—Whether cost of lift repairs allowable in computing gross annual value—Schedule A, No. 1, No. V, Rules 7 and 8, No. VII, Rule 8.*

The case of *Pearl Assurance Co., Ltd. v. O'Callaghan* (K.B.D., October 2, 1942, T.R. 249) can be explained in very few words. The appellants owned an office building wherein the tenants had, as usual, the use in common of a passenger lift. The cost of lift service was allowed as a deduction from the rents paid in arriving at the gross assessment upon the appellants in respect of the whole building, and the issue was whether the cost of repairs to the lift was to be allowed in arriving at the said assessment or should be deemed to be covered by the statutory repairs allowance under Rule 7 of No. V. The Commissioners decided in favour of the Revenue; but this was reversed by Macnaghten, J.

The reasoning of the judgment seems open to criticism. It is not clear, in so far as the question is one of repairs and gross Schedule A, wherein lifts differ from, say, lavatories.

## THE OFFICERS' ASSOCIATION

The Officers' Association records a slight increase in its work during the past year, though it is still considerably less than at the outbreak of war. As officers continue to leave the three Services and the women's services on account of ill-health, age or other reasons, a continued increase is to be anticipated in applications for the help and advice which the Association renders to ex-officers and their families. The policy of the Association is that the general standard of relief will not be reduced so long as funds are available. The Council therefore asks for cash donations, subscriptions, and gifts of clothing, both to meet present commitments and in view of the heavy calls that will have to be met at the time of general demobilisation. The balance in hand at September 30, 1942, was £35,656, compared with £42,207 a year earlier. The decrease is attributed to an increase of £6,565 in relief expenditure—mainly for non-disabled officers, widows, and education—coinciding with a decrease in legacies, subscriptions and donations. The Association maintains an employment bureau, a free legal and financial advice bureau, and a claims and pensions bureau, all of which have been active in helping and advising officers and ex-officers and their wives and widows. Close liaison is maintained with other bodies and trusts, whose co-operation is gratefully acknowledged. The Association's headquarters are at 8, Eaton Square, London, S.W.1.

The Export Credits Guarantee Department provides cover for exporters up to 85 per cent. or 90 per cent. During the quarter ended December 31, 1942, the Department assumed liability up to a maximum of £7,049,093 in respect of contracts, policies and guarantees amounting to £12,640,229.



## Publications

**Studies in Mathematical Economics and Econometrics.** In Memory of Henry Schultz. Edited by Oscar Lange, Francis McIntyre and Theodore O. Yntema. (University of Chicago Press; Cambridge University Press. Price 15s. net.)

Professor Schultz died in 1938. He was a member of the Department of Economics in Chicago University, he had been teaching for a number of years, and had published two books and a number of articles and reviews, all in the application of statistical methods to economic enquiry. This book contains three articles on the Professor as friend and as economist; the remainder of the book consists of a series of essays in economic and statistical theory, carrying on the work which he had been doing. These are written by friends in America, Britain, France and Holland.

In the first of the six essays in economic theory, Professor Jaffé offers an exposition of Leon Walras' theory of capital accumulation, from the special point of view of the affinities between Walras and the more recent Keynesian theories. This is an elaborate explanation with full mathematical apparatus of the writings of Professor Walras, and will be found useful by students of his works.

Part IV consists of six essays in econometrics, one of which is by an English economist, Mr. R. G. D. Allen, of the London School of Economics, on "Expenditure Patterns of Families of different types." This describes in one of the most interesting essays of the book the analysis of about 3,000 schedules of family expenditure, collected in several American cities during 1935 and 1936. He divides the families into six different groups, according to the composition of the family, and then analyses and compares the expenditures of the different groups under several selected heads. It is interesting to discover that a typical wage-earning family consisting of (a) a man and wife with no children (Chicago) spends 32.3 per cent. of its income on food and 8.3 per cent. on clothing, whilst (b) when the family includes not only the man and wife but four children the ratios are 39.4 per cent. and 8.4 per cent. respectively. The food shows a natural increase in the percentage of the income so absorbed, but it is surprising to discover that six persons manage to live on so small a relative increase in clothing cost. For a clerical family the proportions are (a) 27.4 per cent. and 9.4 per cent.; (b) 35.7 per cent. and 9.6 per cent.

One other essay must be referred to. Mr. Dean, of Chicago University, has been making investigations into the cost functions of a departmental store and was fortunate enough to find a large metropolitan store which had not only maintained unusually comprehensive accounting and statistical records for a number of years, but was ready to co-operate in the enquiry. He examined monthly data for sixty consecutive months covering 1931 to 1935, and using index figures to ensure secrecy as to the magnitudes, has provided a series of tables and charts with a detailed exposition of the results.

Altogether a worthy tribute to an earnest worker in this particular field.

**Principles of Mercantile Law.** By J. Charlesworth, LL.D. (Stevens & Sons, Ltd., and Sweet & Maxwell, Ltd., London. Price 10s. net.)

The first edition of this book was published in 1929 and it has now arrived at a fifth edition. This is a sufficient indication of its value to students. The mass

of detail which has to be dealt with is here so presented that the main principles are not lost sight of. The book is, therefore, very useful to all who are interested in the study of mercantile law. It is fully illustrated by reference to decided cases: the table of cases referred to occupies 31 pages.

The present edition deals with the Hire Purchase Act, 1938, the Limitation Act, 1939, and the Liability for War Damage (Miscellaneous Provisions) Act, 1939. In addition, there is a brief account of the Liabilities (War-time Adjustment) Act, 1941. Of the working of this last-named Act very little information is available to accountants, but it must not, on that account, be overlooked.

**Income Tax for H.M. Forces.** By Captain G. B. Burr. (Fiscal Press, Ltd., London. Price: 1s. 6d. net.)

This useful little book of 48 pages gives an outline of our system of the imposition and collection of income tax as it affects the civilian, and proceeds to graft on the special provisions which apply to the members of the three Services.

Much detail is given relating to items of receipt, which are listed under the headings of "Assessable" and "Not Assessable." Among the many subjects dealt with are taxation matters relating to prisoners of war; R.A.F. in Canada; service deductions; first and last years of assessment; optional concession; special concession; concession on continuing pay; war relief and service abroad. The author has taken care to employ simple language throughout, and no difficulty should be experienced by anyone unfamiliar with the subject in applying to his own particular needs the information given.

**The Burden of British Taxation.** Economic and Social Studies, 11. By G. Findlay Shirras and L. Rostas. (Cambridge University Press. Price 15s. net.)

This is an enquiry, fully supplied with tables, into the proportionate payments by way of taxation on each of a range of incomes, the years selected for investigation being 1937-1938 and 1941-1942.

The pioneer in this class of enquiry was Sir Herbert (now Lord) Samuel, who gave his results in an address to the Royal Statistical Society in 1919; this was followed up by the calculations of the Colwyn Committee published in 1927. The outbreak of war has transformed the amount and the scale of taxation, so that whilst in broad terms it may be said that in 1913-1914 taxation absorbed between 6 per cent. and 8 per cent. of the net national income, the authors estimate that in 1941-1942 it was somewhere in the region of 30 per cent., without including either local rates or a number of compulsory levies which do not reach the Exchequer.

It will be obvious that any judgment on the equity of the existing tax system calls for a new consideration of the effective rates of tax at various levels of income. Equity requires still another investigation, of a kind not yet attempted by any enquirer, into the ratio of advantages derived from the national taxation, e.g., the social services. Probably this is a task any satisfactory accomplishment of which would be impossible, but without it we are studying one side of the account only.

The present report consists of three parts. The first deals with the definitions and assumptions on which the calculations are based, and it is obvious that these assumptions call for the strictest examination before the figures presented are used. There is an appendix of tables and charts, and, finally twelve chapters discuss the taxes individually. These set out in great detail the methods adopted by the authors for the estimation of the tax burden, including income tax, sur-tax, death duties, and the several commodity taxes—entertainment

duty, social service contributions, etc. The difficulty of the enquiry will be appreciated by considering such an example as the entertainment duties; the total is known, but how is that spread over the various grades of income?

This is a fascinating enquiry, and the amount of labour and ingenuity which have been expended has resulted in a real contribution to knowledge, though, alas! no accountant could certify the results, even with the most elaborate qualification clause.

## **FINANCE**

# **The Month in the City**

### **Reinvestment**

The beginning of 1943 has been characterised by a considerable increase in Stock Exchange activity. In part this has been due to the improvement in the military news and to the intangible influences associated with the opening of a new year. But the source of the material upon which these factors have been able to operate has been a series of additions to the volume of money seeking investment. The most substantial of these additions was caused by the repayment of India 3½ per cent. stock at the beginning of the month. At about the same time the Treasury had to implement its underwriting guarantee by repaying the unconverted 50 per cent. of £16 million Australia 2½ per cent. stock. These are, however, not to be the last of the repayments. Still larger operations on the part of South Africa and India have subsequently been announced, and the details are discussed below. These repayments have had the natural effect of driving up Stock Exchange prices, and the relative movements of different sections have provided an interesting indication of the direction of reinvestment. A considerable part of the new money has gone into Government "tap" loans (on less favourable terms since the introduction of the new War Bond issue), and has been reflected in larger weekly savings figures. The remainder has had to seek a new home among existing securities, and investors have been faced with a difficult problem in endeavouring to maintain the return on their money. Those who are limited to fixed-interest securities turned first to British Funds, but the decline in yields in this section soon diverted them to Dominion Government stocks and Home Rail prior charges, all of which advanced in their turn. A considerable proportion of the reinvestment money also overflowed into equities, and in the industrial group the search for yield has attracted attention to iron, coal and steel shares, for instance, and the smaller engineering issues, which have hitherto been rather neglected, either because of their more uncertain post-war prospects or because of their lesser marketability.

### **South Africa and India**

The second South African vesting order was announced towards the end of last year. It concerns about £40 million of Union debt, payment for which will be made on February 15, and it disposes of almost the whole of the Union's remaining sterling debt. The Indian operation also completes the repatriation of direct Government liabilities, and concerns a nominal amount of £31 million of Indian railway debenture stocks. In the case of three of the stocks twelve months' notice of redemption is to be given, while the remaining nine are to be requisitioned for payment on March 12. For the two countries concerned these operations are a convenient method of reducing the immense sterling balances which result from their

continued export surplus. In the case of South Africa the arrangement is also a direct gain to the British Treasury, which pays out sterling to the dispossessed stockholders against the receipt of gold from the South African Reserve Bank—and gold means dollars. The holder of the securities involved may, however, be forgiven for feeling that he gets the worst of the bargain. It amounts, in fact, to an infringement of his contract, and almost certainly forces him to accept a lower return on his money. Moreover, the conflict of interest is not inevitable. The convenience of the Dominions could be regarded and equitable treatment given to the stockholder, if the Treasury were to take over the service of the debt in return for a capital payment. The arrangements made in the case of the Indian railway annuities provide a precedent, and it is a pity it could not have been repeated. The latest Indian operation gives other grounds for criticism. Three of the stocks involved are being called for redemption, and it is understood to be the general intention of the authorities not to vest stocks which can be called. Yet among the vested stocks is included £7.6 million of East Indian Railway 3 per cent. redeemable debentures, and it is difficult to dissociate the authorities' preference for the vesting method in this case from the fact that the issue stands well below par. The securities for which redemption notice is being given already stand near par.

### **Railway Dividends**

The results of the four main-line railways and the London Passenger Transport Board will be announced this month. In anticipation of the event, as well as in response to the general pressure of money, railway stocks have been active. Under the rental arrangements stockholders are not directly interested in the present level of net revenue, though it might possibly have some relevance to any post-war settlement. The figure is, however, awaited with considerable interest, and some estimates suggest that the Government will get as much as the companies out of the pool for 1942. Others deny this possibility on the grounds that insufficient allowance has been made for the effect of retrospective wage increases and for the fact that the amounts currently set aside for post-war replacement are adjusted to accord with the rise in costs. Whatever the truth of the matter, stockholders' immediate prospects are concerned with other things. One important factor which may influence dividend policy is the level of the railways' ancillary receipts from shipping, hotels and road transport, which stand outside the pool arrangements. An increase in these could raise the amount distributable on the marginal stocks. Another factor is whether railway boards will choose to distribute earnings up to the hilt. If they did, slightly larger payments would be possible even without a rise in ancillary receipts. The answer probably depends as much upon high policy as upon the actual figures.



## — Points from Published Accounts

### British Celanese

The accounts of British Celanese for the year to June 27 last were eagerly awaited in view of the scheme for the funding of the second preference dividend arrears which had been approved in the closing weeks of 1942. The scheme provided for the issue of 5 per cent. funding certificates in satisfaction of the arrears, and before it could stand fully justified in the eyes of the second preference shareholders these certificates would have to attain a quotation of par, as compared with a current price of around 18s. 3d. Judged from this viewpoint the accounts are frankly disappointing. An official estimate made when the scheme was first mooted predicted a surplus of £1,270,000, subject to income tax and E.P.T., for the past period, as compared with £487,257 for 1940-41. The actual figure proves to be £1,437,353, but there is a provision of £1,095,000 for taxation, in respect of which no estimate had been given. After the remuneration of prior charges the carry-forward is raised from £275,680 to £511,988. This does not, however, provide a true guide to the amount which will be similarly available in the future, even assuming maintenance of trading profits. To begin with, the tax charge would have been £75,000 greater had not a provision of that amount made in previous years been applied as an offset. Then, only a half-year's dividend has fallen to be paid this time on the second preference shares, and the £1,700,000 of funding certificates rank for neither interest nor redemption service. Had the full prior charges fallen to be met, and had the final result not benefited from the tax release, the "equity" profit would have been only £49,490, of which the small sum of £9,898 would have been available for certificate redemption. This would imply earnings of only 2½ per cent. on the ordinary shares, even though no provision has been made this time for writing down the "Commutation of Royalties" asset, to which £61,142 per annum has been applied in recent years, and although war damage contributions of £75,568 have been charged to suspense account. The auditors' report is given subject to the remark that no part of the cost of commutation of royalties has been written off in respect of the year; and it may be noted that intangible assets now account all told for £3,083,636 of a balance-sheet total of £15,297,120.

### Short's Dividend Payments

A curious set of accounts is submitted by Short's, the wine and spirit merchants. A net profit of £26,229 (against £12,153 in 1940-41 and £20,134 in 1939-40) is carried from profit and loss to general profit account in the balance sheet. There, after deduction of fixed preference and preferred dividends of £15,500 gross, a balance of £12,240 (against £1,511) is shown to be carried forward "subject to confirmation of annual general meeting in respect of dividends paid 1940 to 1942." This presumably refers, apart from the preference and preferred dividends paid during the period mentioned, to a 5 per cent. dividend declared payable for last October. No specific mention of this payment is made in the accounts, which are unaccompanied by a directors' report, and as these were circulated to the press there was nothing to show that the board had, in

fact, decided to resume deferred dividends after a two years' lapse. The point has importance if only because it is impossible to tell whether the £10,728 addition to carry-forward is wholly net or only partly net. The previous deferred dividend was provided, in the 1938-39 accounts, on a gross basis, and if the same is true this time the "grossed up" net profit would be £28,207. If, however, the tax on the dividend has already been deducted, leaving only a net provision to be made for that distribution, the "grossed up" figure would be as high as £32,582. In fairness it ought to be added that the company has been most unfortunate in that its head offices, as well as several of its other properties, have suffered severe damage as a result of enemy action.

### Turner & Newall

Except in one particular the Turner & Newall accounts are a model of their kind. A profit and loss account which gives, *inter alia*, the amount of the tax-provision, is accompanied by detailed balance sheets of the parent concern and the group as a whole. A prominent position is given to a full-page statement setting out the investment holdings, which total £2,743,887, these being grouped under the headings "investments representing the mines amortisation fund," "investments representing available funds," "Tax Reserve Certificates," and holdings of "subsidiary companies." This is particularly valuable as showing that ordinary stock of British Oxygen to the nominal value of £112,000 is entered in the books at £1, whereas its market value at the balance-sheet date was £385,000. The matter on which the accounts fail to be precise is the cost of the dividends. The gross cost of the preference dividend is given as £101,098 and of the interim ordinary dividend as £199,963. From the total is deducted £144,259 for income tax, leaving a debit of £156,802 net, as well as one of £250,787 net for the final ordinary payment, to appropriation account. The drawback of this method of presentation is that the ordinary dividend, at any rate, is paid less income tax at a reduced rate owing to income-tax relief. No mention of this is made in the report and accounts—to make this omission is, unfortunately, common practice—and to calculate the exact dividend cover for each class of share entails, quite unnecessarily, a hunt among documents or sources of reference to ascertain the appropriate rates of tax deduction and then the working of a sum which for many investors has its complications.

### Ind Coope & Allsopp

It has sometimes been necessary in these notes, while offering thanks for detailed information given in certain accounts, to urge that this should be presented in an easily assimilable form. In this connection we have mentioned Ind Coope & Allsopp, which was in the habit of submitting a consolidated statement summarising the assets and liabilities of the parent company and displaying the corresponding items for the subsidiaries in a parallel column, without, however, giving the totals for the two sets of figures. We are pleased to notice that this year the parallel columns have been abandoned in favour of a single column giving the totals for the group as a whole.

**LAW****Legal Notes****EMERGENCY LEGISLATION**

*Lighting Restrictions—Company liable, although offence due to negligence of servant.*

In *Meadow Dairy Company Ltd. v. Cottle* (59 T.L.R. 72), the Divisional Court decided a point of interest to companies under the Lighting (Restrictions) Order, 1940. By Reg. 24 (2B) of the Defence (General) Regulations, 1939, the occupier of premises is guilty of an offence if he fails to comply with any order under the regulation, but it was to be a defence if he proved that the contravention occurred without his knowledge and that he exercised due diligence to secure compliance. As there was considerable difficulty in fixing the manual act of displaying a light on the person charged, Reg. 52 (4) was introduced. This states that any provision of the order rendering unlawful the display of any light is to be construed as including a specific provision that "no person shall cause or permit" that light to be displayed. The company were charged under the order of 1940 with causing a light to be so displayed in a roofed building occupied by them that it was visible during the hours of darkness from outside. The company proved the matters set out in the proviso, and showed that the manageress had been repeatedly warned to exercise due care. The company were convicted at petty sessions, but successfully appealed to quarter sessions. On a case stated, the Divisional Court restored the conviction, because the proceedings had been taken under the order, not against the company as occupiers.

**EXECUTORSHIP LAW AND TRUSTS**

*Will—Condition prohibiting marriage with person "not of Jewish parentage and of the Jewish faith" void for uncertainty.*

The power of testators to control from the grave the choice in marriage of beneficiaries is allowed within narrow limits, though it is regarded with disfavour by the courts. A testator who wishes to leave an estate or interest subject to a defeasance clause must be careful to ensure that the clause is properly expressed otherwise it will probably fail for uncertainty. This difficulty was forcibly illustrated in *Clayton v. Ramsden* (59 T.L.R. 75), when the House of Lords, overruling a decision of the Court of Appeal, decided that such a condition subsequent (in the circumstances of the particular case) failed for uncertainty, with the result that no defeasance took place. A testator gave a legacy and a share of his residuary estate on trust in favour of a daughter and her children, subject to the condition that "if she shall at any time after my death contract a marriage with a person who is not of Jewish parentage and of the Jewish faith," the trusts declared in favour of the daughter and her spouse and the children of any such marriage should cease and determine. The daughter married a man who was not of Jewish parentage and not of the Jewish faith. The House of Lords held that the condition was a composite condition, so that if either limb was not sufficiently clear and distinct, the whole condition was void; that the words "of Jewish parentage" referred to race and not to religion; and that the uncertainty attaching to the requirement of Jewish parentage avoided the whole condition subsequent, and therefore there was no defeasance. Four of the five law lords also held that the words "of the Jewish faith" were too vague to enable it to be said with certainty that a particular

individual complied with the requirement. The legal principle is that where a vested interest is to be defeated by a condition on a contingency that is to happen subsequently, that contingency must be such that the court can see from the beginning, precisely and distinctly, upon the happening of what event it was that the preceding vested interest is to determine. The beneficiary should be in a position to know beyond any doubt what he is to do or not to do to avoid a forfeiture.

*Debt due to executor—Limitation of actions—Inland Revenue affidavit.*

In *Trustee in Bankruptcy v. Bowring-Hanbury* (1943, 1 All E.R. 48), the Court of Appeal, affirming Bennett, J., held that the statement in the Inland Revenue affidavit sworn by an executor was a mere statement of facts and did not constitute a promise to pay. The respondent advanced £10,000 to his wife in December, 1924, of which she repaid £1,000 in June, 1929. She died in 1931, having appointed the respondent her sole executor. In May, 1931, in order to obtain probate, he swore an Inland Revenue affidavit in which the debts listed as due from the wife included the debt of £9,000, the balance of the loan. In 1935 he was adjudicated bankrupt. The action was commenced by the Trustee in Bankruptcy in July, 1936; he sued the respondent as the wife's executor. It was contended that, although six years had elapsed from the accrual of the cause of action, the debt was not barred by the Statutes of Limitations, because the statements in the affidavit and in a letter by his solicitors constituted acknowledgments of the debt by the respondent sufficient to take it out of the operation of the statutes. It was also argued that in computing the period of six years, the time subsequent to March 17, 1931, must be disregarded, because from that date, owing to the respondent having been appointed his wife's sole executor, there was one hand only to pay and to receive, and that therefore the operation of the statutes was suspended. The Court rejected all those contentions and held that the debt was statute-barred.

**MISCELLANEOUS**

*Enemy alien—Effect of enemy occupation—Company in Allied State occupied by the enemy.*

Much difficulty has been caused in this war, as it was in the last, over legal problems concerning companies in Allied countries overrun by the enemy. The crucial question is whether such a company is disqualified from pursuing an action in British courts. In *Soufracht v. Van Udens* (1942, W.N. 223), the House of Lords allowed an appeal from the Court of Appeal, and decided that a company incorporated in Holland before the war, under Dutch law, and carrying on business as shipowners, principally at Rotterdam, could not pursue an action in English courts. The company had chartered a vessel to the appellants, a Russian company. The charter provided that disputes should be settled by arbitration in London. On a dispute, the respondents claimed arbitration in London and in April, 1940, each party appointed an arbitrator. Then Holland was overrun. The appellants refused to proceed on the ground that respondents were enemy aliens. The Court of Appeal had upheld Asquith, J., in holding that respondents were not in the position of alien enemies at common law and therefore could pursue their remedy in the courts. The House of Lords unani-



mously reversed that finding. The Lord Chancellor said that the test was objective, turning on the enemy's relation to the territory where the company was commercially domiciled. It all depended on the degree of subjugation. If it were substantial, making enemy administration as complete as though the area were part of the enemy's territory, then local residents could

not sue in British courts; but if the occupation were slighter, merely for military strategy, the case would be different. The occupation of Holland was of the absolute kind. The question was one of public policy, which forbade acts which might be to the advantage of the enemy State in adding to the resources of individuals in the enemy State.

## The Emergency Acts and Orders

In our November, 1939, issue we published the first instalment of a comprehensive guide to the wartime enactments and Orders which most concern the accountant. The thirty-seventh instalment is given below. The summaries are not intended to be exhaustive, but only to give the main content of an Act or Order, the full text of which should be consulted if details are required.

### ORDERS

#### EXPORT

No. 2660 (1942). *Export of Goods (Control) (No. 45) Order, 1942.*

Previous Export Control Orders, and the Arms Export Prohibition Orders, 1931-37, are revoked and superseded.

(See ACCOUNTANCY, December, 1942, page 57.)

#### FINANCE

No. 2626 (1942). *Defence (Finance) (Definition of Sterling Area) Order, 1942.*

A revised definition is given of the sterling area, which now includes Madagascar and its dependencies. (See ACCOUNTANCY, February, 1942, page 89.)

No. 2545 (1942). *Securities (Restrictions and Returns) (No. 2) Order, 1942.*

No. 2546 (1942). *Acquisition of Securities (No. 3) Order, 1942.*

No. 61 (1943). *Securities (Restrictions and Returns) (No. 1) Order, 1943.*

No. 62 (1943). *Acquisition of Securities (No. 1) Order, 1943.*

Certain inscribed stocks of the Union of South Africa and debenture stocks of Indian railways are compulsorily transferred to the Treasury. Returns must be made to the Bank of England by March 18 or April 15.

(See ACCOUNTANCY, April, 1942, page 121, and this issue, page 94.)

#### MANUFACTURE AND SUPPLY

No. 2605 (1942). *Toilet Preparations Order, 1942.*

Restrictions are imposed on the supply of toilet preparations for the six months ending June 30, 1943. Petroleum may not be used in the manufacture of certain controlled goods, and some other substances may not form more than one part in 200 of any controlled goods.

(See ACCOUNTANCY, September, 1942, page 217.)

No. 2581 (1942). *Domestic Furniture (Control of Manufacture and Supply) (No. 3) Order, 1942.*

Maximum prices are prescribed for utility furniture on sale by a manufacturer to a trader or to a retail customer. On sale to a trader the manufacturer must furnish an invoice containing specified particulars.

No. 27 (1943). *Control of Willow Rods and Sticks (No. 2) Order, 1943.*

Manufacture is prohibited of a large number of articles made of willow rods or sticks.

(See ACCOUNTANCY, December, 1942, page 57.)

#### PRICES OF GOODS AND SERVICES

No. 2559. *Price-Controlled Goods—General Licence.*

Wholesalers may resell by wholesale price-controlled

fur skins, goods bought from a firm closed under a concentration scheme, second-hand goods bought either at an auction sale or from a member of the public, or any second-hand goods made before 1701 (carpets and rugs) or before 1831 (other goods). The previous General Licence is revoked.

(See ACCOUNTANCY, August, 1942, page 199.)

No. 16 (1943). *Toilet Preparations (Maximum Prices) Order, 1943.*

Remaining stocks of preparations the manufacture of which is prohibited under the Toilet Preparations Order, 1942 (No. 2605, summarised above), may not be sold at higher prices than the lawful current prices of December 1, 1942.

(See ACCOUNTANCY, January, 1943, page 74.)

#### STORAGE FACILITIES

No. 2264 (1942). *Storage Facilities (Information) Order, 1942.*

A return must be made to the Registrar of Factory and Storage Premises, Board of Trade, by the occupier of any premises with a floor area of 10,000 feet super or more which are used for wholesale or retail trade in goods other than food or drink. Separate premises within an area of a quarter of a square mile are treated as parts of the same premises if they are occupied by the same occupier.

(See ACCOUNTANCY, November, 1942, pages 23 and 37.)

#### TRADING WITH THE ENEMY

No. 2478 (1942). *Trading with the Enemy (Specified Persons) (Amendment) (No. 20) Order, 1942.*

Amendments are made in the list of persons deemed to be enemies.

(See ACCOUNTANCY, January, 1943, page 74.)

#### WAR DAMAGE

No. 2490. *War Damage (Valuation of Hereditaments in Special Cases) Regulations, 1942.*

Rules are laid down for the valuation of premises of a kind not normally the subject of sales in the open market.

(See ACCOUNTANCY, January, 1943, page 74.)

## LONDON STUDENTS' SOCIETY

### SYLLABUS OF LECTURES

The following lectures will be held at Incorporated Accountants' Hall during the Spring Session. All members of the accountancy profession will be welcome.

1943.

March 25, at 4.30 p.m.—"Post-War Construction," by Mr. Collin Brooks, Editor of *Truth*. Chairman: Mr. O. R. Hobson (City Editor of the *News-Chronicle*).

April 20—"Substituted Standards," by Mr. Percy F. Hughes, Incorporated Accountant. Chairman: Mr. S. T. Morris, Incorporated Accountant.

May 12—"Wartime Financial Difficulties and Their Adjustment," by Mr. C. W. Bird, Liabilities Adjustment Officer, London, South. Chairman: Mr. Richard A. Witty, President of the Society of Incorporated Accountants.

# Society of Incorporated Accountants

## MEMBERSHIP

The following promotions in and additions to the membership of the Society have been completed:—

### ASSOCIATES TO FELLOWS

**Basu, Debralsata, B.Sc.**, Calcutta, Practising Accountant; **Basu, Sisir Kumar, B.A.** (S. K. Basu & Co.), Calcutta, Practising Accountant; **Broadley, Thomas**, Nottingham, Practising Accountant; **Clark, James Yuill** (Brodie, Burns & Anderson), Glasgow, Practising Accountant; **Hardy, Harold** (Kitson & Hardy), Wakefield, Practising Accountant; **Milton, Philip Henry**, Borough Treasurer, St. Marylebone; **Morley, Henry Albert**, Nottingham, Practising Accountant; **Primost, Sydney Simon** (S. Primost & Co.), London, Practising Accountant; **Rothwell, Lionel Alan**, County Accountant of Middlesex; **Rouse, Francis Lionel** (F. L. Rouse & Co.), Beaconsfield, Practising Accountant; **Russell, William George Ainge** (W. G. A. Russell & Co.), Birmingham, Practising Accountant; **Thornley, Fred**, Ashton-under-Lyne, Practising Accountant; **Wild, James**, Radcliffe, Manchester, Practising Accountant; **Woolley, Edwin**, Birmingham, Practising Accountant; **Young, Frank Baldwin**, Southampton, Practising Accountant.

### ASSOCIATES

**Ashworth, John Harvey**, Clerk to Ashworth, Moulds and Co., Burnley; **Blake, Denis Aldiss**, Clerk to Allan, Charlesworth & Co., London; **Boorman, Victor Douglas**, Clerk to R. H. Munro & Co., London; **Brennan, Maurice**, Clerk to Purtill & Co., Dublin; **Buckingham, Walter Edgar Bernard**, County Treasurer's Department, Dorchester; **Carey, Arthur Patrick**, Clerk to Purtill & Co., Dublin; **Carpenter, John Edward Millington**, Audit Commissioner's Office, Mersey Docks and Harbour Board; **Collington, Edward**, Clerk to John S. Gavin & Son, Glasgow; **Cooper, Victor Harold**, Clerk to Peat, Marwick, Mitchell & Co., Birmingham; **Dace, Charles William**, South Africa; **Davis, William Leslie**, Clerk to W. E. Warrington, (Baker & Co.), Northampton; **Fare, John Parkinson** (S. E. Cottam & Son), Manchester, Practising Accountant; **Flinton, Harry**, Clerk to Buckley, Hall, Devin & Co., Hull; **Forster, Bert Kenneth**, Newcastle-upon-Tyne; **Hare, John**, Clerk to Douglas Low & Co., Johannesburg; **Hews, Frederick Royal**, Worthing, Practising Accountant; **Hubbard, Ernest Thomas Frederick**, Chief Accountant's Department, Port of London Authority; **Hurst, Oliver Lloyd**, Treasurer, Kildgrove Urban District Council; **Kershaw, Clifford Harold**, Clerk to Wells and Richardson, Sheffield; **Lentell, Doreen Joy**, Clerk to C. I. Lentell, Seaton (Devon); **Lloyd, Barbara**, Treasurer's Office, Abertillery, Mon; **McLintock, David Hamilton Burns**, Clerk to Felton & Co., Birmingham; **Mack, Reginald John, B.Com.**, Clerk to James, Edwards & Co., London; **Phillips, Harold Victor**, formerly Clerk to Harper, Kent & Wheeler, Shrewsbury; **Pickin, Joseph Reginald**, Clerk to Bourner, Bullock & Co., Hanley; **Roberts, Michael Elvey**, Clerk to C. A. Moulton & Co., Wakefield; **Searle, Arthur John**, Clerk to Lowick and Simpson, Bristol; **Spillane, John Albert**, Dublin; **Stenson, Frederick William**, City Treasurer's Department, Coventry; **Venter, Thomas Kenneth**, Clerk to Hodgson, Harris & Co., Hull; **Webber, Norman Stewart** (Ronald Cross & Co.), Swansea, Practising Accountant; **Whitehead, Leonard Raymond**, Clerk to Beever & Struthers, Manchester; **Whittle, Eric Sydney**, Clerk to Kitson & Hardy, Wakefield; **Wilson, Alexander**, Clerk to Richardson and Lawson, Glasgow; **Woods, Sydney**, Clerk to Woods & Co., Manchester.

### REMOVALS

Messrs. Roberts & Pascho, Incorporated Accountants, will occupy 2, Ermington Terrace, Mutley Plain, Plymouth, as offices, their previous offices in Plymouth having been destroyed by enemy action some time ago. This will also be the address of the Incorporated Accountants' District Society of Devon and Cornwall, of which Mr. P. D. Pascho is the Honorary Secretary.

Mr. J. L. Mudd, Incorporated Accountant, announces a change of address to 56, Newhall Street, Birmingham.

## PERSONAL NOTES

Mr. W. A. Pearman, F.S.A.A., who is well known to members of the Incorporated Accountants' London and District Society, recently received a presentation from his colleagues and staff of the London Power Co., of which he is the General Manager, on the occasion of his seventieth birthday. The presentation was made by Sir Leonard Pearce, the Engineer-in-Chief of the company, who paid tribute to the eminent services rendered by Mr. Pearman to London's electricity supply for a long period of years. Mr. Pearman has had a remarkable record in that he has never been absent through ill-health.

Mr. Edward Ewart Pearce, F.S.A.A., has been appointed Deputy Chairman of the A.R.P. Committee of Cardiff City Council. Mr. Pearce is the senior partner of Messrs. Sweeting, Pearce, Davies & Co. and Vice-President of the Incorporated Accountants' South Wales and Monmouthshire District Society.

Mr. Alexander Philip, M.B.E., A.S.A.A., City Chamberlain of Perth, has been elected President of the Scottish Branch of the Institute of Municipal Treasurers and Accountants.

Mr. Archibald D. Glendinning, A.S.A.A., of the City Chamberlain's Department of Edinburgh Corporation, has been appointed Town Chamberlain of Arbroath.

Messrs. J. W. B. Brown, Sara & Hill, Incorporated Accountants, of Prudential Buildings, St. Philips Place, Birmingham, announce that the partnership has been dissolved by mutual consent. Mr. S. S. Sara will practise on his own account as S. Sara & Co. and Mr. E. K. Hill as Edward K. Hill & Co. They will continue to practise from the same address as before.

Mr. T. Harrison, F.S.A.A., secretary and chief accountant to Willis, Faber & Dumas, Ltd., insurance brokers and underwriters, of 54, Leadenhall Street, E.C.3, and Lloyd's, has been appointed a director of the company.

Messrs. B. Davies & Co., Incorporated Accountants, Merthyr Tydfil, have taken into partnership Mr. C. A. Nicholas, A.S.A.A., who served his articles with them. There will be no change in the name of the firm.

## OBITUARY

### CHARLES GODOLPHIN GRAVES

We regret to record that Mr. C. G. Graves, J.P., F.S.A.A., F.C.I.S., a partner in Messrs. Graves & Scase, Kingston-on-Thames, died on December 13. Mr. Graves was educated at Christ's Hospital, and spent several years as an apprentice and an officer in the merchant navy before entering the office of a firm of Chartered Accountants in 1882. He had been in practice as an Incorporated Accountant at Kingston-on-Thames since 1902, when he became a member of the Society. He took a great interest in religious and public work, and was a founder member of the St. Margaret's Lodge, No. 1872, and a member of the Kingston Rotary Club.

### HERBERT PRIESTLEY

In 1903 a committee of members of the Society was founded in New South Wales when Mr. Herbert Priestley, J.P., F.S.A.A., became the first President. It is with regret that we record his death during the month of January. Mr. Priestley was elected a member of the Society in 1893 and was a partner in Messrs. Priestley & Morris, Incorporated Accountants, in Sydney until 1929. He again became Chairman of the Society's New South Wales Committee in 1916, and retained the office until his death. Mr. Priestley maintained communication with the Society's head office almost up to the time of his death, and he was a welcome visitor when he came to England on a visit some years ago. He was zealous in upholding the position of Incorporated Accountants in Australia, and kept the Council informed of developments in the profession in the Commonwealth.

*A special memoir of the late Mr. Arthur E. Piggott appears on page 88.*